

**DISCLAIMER**

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**COMMONWEALTH OF VIRGINIA, ex rel.**

**DELTA RESOURCES, INC.,  
Complainant**

**v.**

**CASE NO. PST990004**

**VIRGINIA ELECTRIC AND  
POWER COMPANY,  
Defendant.**

**HEARING EXAMINER'S RULING**

**January 31, 2000**

On December 6, 1999, Delta Resources, Inc. ("Delta") filed a formal complaint against Virginia Electric and Power Company ("Virginia Power") with the Commission pursuant to Rule 5:6 of the Commission's Rules of Practice and Procedure. Delta, a Tennessee corporation owning coal reserves in southwestern Virginia, requests that the Commission investigate Virginia Power's use of the tax credit provided by § 58.1-2626.1 of the Code of Virginia in connection with purchases of Virginia-produced coal for resale. Delta asserted that the credit was not intended to be applicable to coal that is resold, and therefore Virginia Power should not be able to claim the credit on coal that it purchases and resells.

On January 28, 2000, Virginia Power filed a Motion to Dismiss and a Motion for Leave to File its Motion to Dismiss Out of Time with the Commission. In its Motion for Leave to File its Motion to Dismiss Out of Time, Virginia Power states that the courier responsible for delivering its Motion to Dismiss had an accident on January 27, 2000, en route to the Commission. As a result of this accident, the courier service was not able to deliver Virginia Power's Motion to Dismiss until 9:22 a.m. on Friday, January 28, 2000. As an exhibit to its Motion, Virginia Power attached a letter from the courier service documenting the accident and the courier service's inability to timely deliver Virginia Power's Motion to Dismiss.

In its Motion to Dismiss, Virginia Power argues the actions described in Delta's complaint comply with the Virginia Coal Employment and Production Tax Credit established by § 58.1-2626.1 of the Code of Virginia. Virginia Power further argues the plain language of the statute does not prohibit Virginia Power from claiming the tax credit on coal that is purchased and then resold. Finally, Virginia Power argues that it complied with Virginia law therefore Delta's complaint should be dismissed for failing to state a cause of action for which relief may be granted by the Commission.

Upon consideration of the pleadings, I find Virginia Power's Motion for Leave to File its Motion to Dismiss Out of Time should be granted and I further find Delta should be afforded an opportunity to file a response to Virginia Power's Motion to Dismiss. Accordingly,

**IT IS DIRECTED THAT:**

(1) Virginia Power's Motion for Leave to File its Motion to Dismiss Out of Time be, and it is hereby, **GRANTED**; and

(2) On or before February 11, 2000, Delta shall file any response it has to Virginia Power's Motion to Dismiss.

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Michael D. Thomas  
Hearing Examiner